

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

**PYLE, THOMAS G.,
Respondent**

CASE NO: SC85650

RESPONDENT'S BRIEF

**THOMAS PYLE
Mo. Bar No. 32232
1765 Seclusion Pt., Apt F
Colorado Springs, CO 80918
719-593-5883**

TABLE OF CONTENTS

	Page
Table of Case Authorities.....	2
Jurisdictional Statement.....	3
Statement of Facts.....	4
Response to All Points Relied On.....	5
Argument.....	6-8
Conclusion.....	9
Certificate of Compliance.....	10

TABLE OF CASE AUTHORITIES

- 1. In Re Wiles, 107 S.W. 3d 228 (Mo. Banc 2003)**
- 2. Rule 4-4.1(a)**
- 3. Rule 4-8.4 (c)**

JURISDICTIONAL STATEMENT

Respondent denies that the jurisdiction of this Court was properly obtained for the reasons set forth in his Motion to Dismiss previously filed with this Court and incorporated by reference herein. Moreover, bare recitals of this Court's jurisdiction are insufficient under Rule 84.04(b) and Informant has failed to properly perfect this Appeal and obtain the jurisdiction of this Court.

In addition, Informant's failure to provide a transcript has required Respondent to make specific factual references to Informant's Appendix hampering Respondent's ability to properly respond to Informant's Brief.

Moreover, Informant's Point Relied On IV raises matters not permitted to be raised in this Appeal as the Disciplinary Panel denied her permission to amend her information and as a result there is no jurisdiction over the issues raised regarding Respondent's alleged failure to properly supervise an employee.

STATEMENT OF FACTS

Respondent accepts generally the Statement of Facts filed by Informant with the following additions and corrections:

1. To the best of Respondent's knowledge he was never ordered to file an Answer and moreover, could not be ordered to file one until a ruling was obtained on the Motion to Dismiss. Apparently, an Answer was filed on August 6th, 2003. The decision of the Disciplinary panel does not indicate any ruling on the Motion to Dismiss. (Appellant's Brief, pg. 15; Disciplinary Panel Hearing Decision, Informant's Appendix A-3-12)

2. The Panel decision did not find that Respondent engaged in conduct involving dishonesty, deceit, or fraud. It found a material misrepresentation based on a factual finding that Respondent lacked authority to sign his client's name to the documents. The only evidence was that Respondent had authority to sign his client's name. (Disciplinary Panel Hearing Decision pgs. 2, 6, Informant's Appendix pgs. A-4, 8, 65; Affidavit filed in support of Respondent's Motion to Dismiss)

3. There is no evidence that Respondent ever again saw the documents after they were delivered to the Notary Public and prior to said documents being forwarded.

4. A Notary Public has an independent duty to ensure proper execution of documents. (Informant's Appendix A-74)

RESPONSE TO ALL POINTS RELIED ON

INFORMANT FAILED TO MEET HER BURDEN OF PROOF THAT RESPONDENT VIOLATED RULES 4-4.1(a) AND 4-8.4(c) IN THAT THE PREPONDERANCE OF THE EVIDENCE PROVED THAT RESPONDENT HAD, AT ALL TIMES, THE AUTHORITY OF HIS CLIENT TO SIGN DOCUMENTS ON HER BEHALF AND THAT RESPONDENT DID NOT SPECIFICALLY INSTRUCT THE NOTARY PUBLIC ON HOW TO PERFORM HER STATUTORY DUTIES AND, THEREFORE, RESPONDENT'S FAILURE TO PROPERLY EXECUTE SAID DOCUMENTS INDICATING HIS AUTHORITY WAS A MINISTERIAL ERROR AND DOES NOT WARRANT DISCIPLINE BY PUBLIC REPRIMAND.

In Re Wiles, 107 S.W. 3d 228 (Mo. Banc 2003)

Rule 4-4.1(a)

Rule 4.8.4 ©)

ARGUMENT IN RESPONSE TO ALL POINTS RELIED ON

INFORMANT FAILED TO MEET HER BURDEN OF PROOF THAT RESPONDENT VIOLATED RULES 4-4.1(a) AND 4-8.4(c) IN THAT THE PREPONDERANCE OF THE EVIDENCE PROVED THAT RESPONDENT HAD, AT ALL TIMES, THE AUTHORITY OF HIS CLIENT TO SIGN DOCUMENTS ON HER BEHALF AND THAT RESPONDENT DID NOT SPECIFICALLY INSTRUCT THE NOTARY PUBLIC ON HOW TO PERFORM HER STATUTORY DUTIES AND, THEREFORE, RESPONDENT'S FAILURE TO PROPERLY EXECUTE SAID DOCUMENTS INDICATING HIS AUTHORITY WAS A MINISTERIAL ERROR AND DOES NOT WARRANT DISCIPLINE BY PUBLIC REPRIMAND.

Informant provides the Court with four Points Relied On/Arguments which simply restate the same factual and legal issues without any significant difference.

The issue is whether Informant established, by a preponderance of the evidence, professional misconduct on the part of Respondent. This Court reviews evidence de novo and reaches its own conclusions of law. In Re Wiles, 107 S.W. 3d 228 (Mo. Banc 2003).

The evidence does not establish that Respondent committed professional misconduct warranting a public reprimand. The evidence does establish that Respondent twice committed a ministerial error by signing his client's name to two different documents without properly noting thereon that he was signing on behalf of his client. The evidence also establishes that he instructed his secretary, who was also a notary public, to notarize the documents; however, it is a

stipulated fact that Respondent did not instruct her on how the documents should be notarized. A Notary Public has an independent duty to ensure proper execution and attestation of documents and, in both cases, the evidence establishes that the Notary Public failed to properly perfect the execution of the documents.

Moreover, the only evidence of record is that Respondent had express authority from his client to sign her name, said authority being not only in writing but confirmed orally prior to the signing of each document as shown by the Affidavit of Respondent attached to the Motion to Dismiss which is a part of the record herein. The Informant provided no evidence that this authority was ever withdrawn, submitted no affidavit contradicting the affidavit of Respondent and, therefore, the facts of record establish that Respondent had, at all times, authority to execute said documents.

Therefore, if Respondent had authority, any failure to properly note said authority on said documents was a ministerial error and his conduct cannot be said to involve any dishonesty, fraud, deceit or material misrepresentation of any material fact. As the evidence establishes he had authority and that he did not instruct the Notary on how to execute the document and, as said Notary has an

independent duty to perfect same, the evidence does not establish that he committed professional misconduct sufficient for a Public Reprimand.

The authorities cited by Informant generally involve a situation where the attorney was a notary public and failed to properly annotate on the forms themselves, which were then filed in Court. In each case cited the evidence is clear that the attorney involved had actual knowledge of the type of notarization used.

In Respondent's case there is no evidence that the documents were ever again presented to Respondent for his review following notarization. Respondent is entitled to rely upon a Notary Public properly performing her duties.

Moreover, while Informant alleges that Respondent's client was involuntarily committed because of severe psychiatric problems, there is no evidence to support same. She was discharged after being involuntarily committed for 96 hours. She was discharged without any medications or any follow up treatment ordered. In fact, the case settled without any Conservator or Guardian being appointed or found necessary by the Federal District Court.

CONCLUSION

The evidence is insufficient to support a finding of professional misconduct for knowingly making a false statement of material fact or law to a third person or for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Moreover, the Informant failed to properly perfect her appeal and same should be dismissed.

**CERTIFICATE OF COMPLIANCE
WITH RULE 55.03, RULE 84.06
AND OF SERVICE**

PURSUANT TO RULE 55.03 I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, FORMED AFTER INQUIRY REASONABLE UNDER THE CIRCUMSTANCES THAT THE APPEAL IS NOT PRESENTED OR MAINTAINED FOR IMPROPER PURPOSE AND THE LEGAL CONTENTIONS THEREIN ARE WARRANTED BY EXISTING LAW AND THE DENIALS OF ANY FACTUAL CONTENTIONS ARE WARRANTED ON THE EVIDENCE HEREIN.

I CERTIFY THAT THIS BRIEF COMPLIES WITH THE LIMITATIONS CONTAINED IN RULE 84.06(B), IS PREPARED IN WORDPERFECT 10 IN TIMES NEW ROMAN AND IN A FONT OF 13 OR GREATER AND CONTAINS 1,369 WORDS AND THAT AN APPROPRIATE VIRUS FREE DISK HAS BEEN FILED WITH THE COURT.

I FURTHER CERTIFY THAT A COPY OF THIS BRIEF ALONG WITH A VIRUS FREE DISK WAS FORWARDED BY FIRST CLASS MAIL, POSTAGE PREPAID, ON 14 DECEMBER 2003 TO THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL, 3335 AMERICAN AVENUE, JEFFERSON CITY, MO 65109.

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